

### COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER:	1899.02
COMPLAINT INVESTIGATOR:	Sandra Scudder
DATE OF COMPLAINT:	March 25, 2002
DATE OF REPORT:	May 6, 2002
REQUEST FOR RECONSIDERATION:	Yes/Revised May 14, 2002
DATE OF CLOSURE:	May 28, 2002

**\*\* This CORRECTED report is being issued on May 14, 2002, as the result of errors discovered in Finding of Fact #8 and Conclusion #3 relating to the manifestation determination. The original report incorrectly found that the case conference committee determined that the behavior was not a manifestation of the disability. The report has been corrected to reflect that the case conference committee determined that the student's behavior was a manifestation of the student's disability. This report replaces the report originally issued on May 6, 2002.**

#### COMPLAINT ISSUES:

Whether the Warrick County School Corporation and the Gibson-Pike-Warrick Special Education Cooperative violated:

- 511 IAC 7-29-2(b) by failing to follow appropriate change of placement procedures (pursuant to 511 IAC 7-27-5) when suspending a student for more than ten consecutive instructional days.
- 511 IAC 7-29-6(b) by failing to conduct a manifestation determination within ten instructional days of deciding to expel a student with a disability.
- 511 IAC 7-29-6(j) by appointing an expulsion examiner prior to conducting a manifestation determination.
- 511 IAC 7-29-5 by failing to convene the case conference committee (CCC) to develop a plan for assessing the student's functional behavior (if no functional behavioral assessment has been conducted) or review an existing behavioral intervention plan to determine if modifications are necessary.
- 511 IAC 7-23-1(p) by disclosing personally identifiable information to the local circuit court without obtaining consent of the parent or eligible student.
- 511 IAC 7-27-7(a) by failing to implement the student's March 7, 2002, individualized education program (IEP) as written, including failing to provide homebound instruction by a licensed teacher in accordance with 511 IAC 7-27-11(e).

The report of this investigation was originally due on April 24, 2002. The associate superintendent extended this deadline on that date, and the new deadline for the investigation report is May 3, 2002. A second extension was granted on May 3, 2002, and the new deadline is May 8, 2002.

**FINDINGS OF FACT:**

1. The Student turned 18 years of age in January 2002. No guardian has been appointed for the Student. He is in the twelfth grade and is eligible for special education and related services as a student with autism spectrum disorder and a communication disorder.
2. The School unilaterally excluded the Student from school from February 14 through March 15, 2002, for a total of 20 consecutive instructional days. The Student was formally suspended from school, pending expulsion, on February 14, 2002. The behaviors resulting in the suspension occurred on December 25, 2001, and subsequent to that time. The suspension notice states the Student is suspended for ten days. The Student should have returned to School on March 1, 2002. However, the School did not allow the Student to return to School on that date. The CCC convened on March 7, 2002, and proposed a change of placement, but the Student did not consent to the change of placement until March 15, 2002. The School continued to exclude the Student from attending School pending the March 7 CCC meeting and the March 15 consent to a change of placement to homebound instruction. The School provided no educational services to the Student during this time.
3. The February 14 suspension was the first suspension for the Student in the current school year. The School sent the parent a copy of the *Notice of School Suspension* and the *Written Charge and Request for Expulsion; Appointment of Expulsion Examiner* notice on February 14. The School acknowledges that it did not follow appropriate procedures for changing the Student's placement. The School provided no educational services to the Student between March 4 (the eleventh day of suspension) and March 15, 2002 when services included in the revised IEP were consented to and were to be implemented.
4. The School appointed an expulsion examiner on February 15, 2002. The principal's written charge and request for expulsion states the Student engaged in conduct in violation of established school rules and that the period of suspension is effective until March 4, 2002. However, the written charge also includes the principal's recommendation that the expulsion examiner continue the period of suspension until such time that the expulsion examiner renders his decision. The form does not require the principal to identify whether the conduct constitutes a violation of Indiana law unless the conduct is of such nature that it violates Indiana law but is not a violation of established school rules.
5. On February 15, 2002, the expulsion examiner sent a letter to the Student's parents advising that the Student's suspension would continue until the examiner made his findings and recommendation to the superintendent. The letter included a *Notice of Right to a Hearing*, advising the parents that they must request a hearing within ten days of receipt of the *Notice*. On February 22, 2002, counsel for the Student and the Student's parents sent a letter to the expulsion examiner, in accordance with the terms of the notice, requesting a hearing date for the expulsion proceedings.
6. The School reports that it rescinded the appointment of the expulsion examiner, pending a manifestation determination, when School personnel discovered that the Student received special education services. However, the School provided no documentation to the expulsion examiner rescinding his appointment, nor did the School provide any documentation of notice to the parent that the rescission had occurred. Further, there was no formal notice to the Student or the Student's parent that the expulsion examiner's extension of the period of suspension beyond March 4 was vacated. To the contrary, on March 1, 2002, the School sent a letter to the

local circuit court that, among other things, stated “expulsion requests have been submitted to the school corporation and to the family.”

7. No functional behavioral assessment (FBA) or behavioral intervention plan (BIP) had been required for the Student prior to the incident resulting in the suspension on February 14, 2002. On March 4, 2002, in preparation for the March 7 CCC meeting, the Student participated in a comprehensive psycho educational evaluation. The School reports it also compiled multi-disciplinary assessment data on the Student, including “an assessment of social, emotional, and behavioral factors relevant to the Student’s behavior.” The CCC reviewed this information and, although no formal BIP was developed, the IEP was revised to include social context and self-advocacy training for the Student.
8. The CCC also conducted a manifestation determination at the March 7 meeting and determined that the student’s behavior was a manifestation of the Student’s disability. The Student’s IEP was revised as part of the March 7 CCC meeting, including a change of placement to homebound instruction. The Student signed the IEP on March 15, 2002, indicating his agreement with the proposed services and consented to the implementation of the IEP. Although the Student gave consent to implementation of the IEP, he noted an exception to the IEP as written, specifically, that he be allowed to attend band class on a daily basis at the School.
9. The Complainant asserts that the Student has not received homebound instruction from a licensed teacher in accordance with the Student’s IEP. The IEP developed by the CCC on March 7, 2002, indicates that the Student will participate in homebound services for the remainder of the semester and lists the following general education subjects in which the Student is to participate: Advanced Composition; Trigonometry; Zoology; Government; Computer Applications; and Chemistry. Specifically, the IEP states that the Student will receive homebound “services” via a liaison teacher for five hours per “school week.” The initiation and duration dates for these services are March 15 and May 22, respectively. The IEP further describes the liaison teacher’s responsibility as being “the intermediary between [the Student] and his 6 teachers (gen.ed.) to bring assignments/to work with [the Student] on follow-up activities in conjunction/consultation with [the Student’s outpatient therapist].” The Student is on a diploma track and expects to receive a high school diploma in May 2002.
10. The teacher responsible for homebound services was notified on March 19, 2002, of his responsibility for these services. The teacher is licensed to teach biology and chemistry at the secondary level. The teacher initially met with the Student on March 22, 2002, and spent the time discussing the Student’s test schedule and assignments. There are differing reports on the amount of time the teacher spent with the Student on this date. The parent reports the teacher was present for 40 minutes, and the teacher reports that he spent 90 minutes with the Student.
11. The School was on spring break the following week (March 25-29). According to the teacher’s claim form, the teacher met with the Student as follows:
 

• Week of April 1	3 days	5.25 hours total
• Week of April 8	3 days	5.25 hours total
• Week of April 15	3 days	5.00 hours total
• Week of April 22	3 days	5.00 hours total

The teacher also met with the Student during the week of April 29, but the total hours were not yet computed. As of May 1, 2002, the teacher had met with the Student a total of four hours.

The parents and the teacher report conflicting information on the amount of time the teacher spent with the Student during the week of April 1

12. During the time spent with the Student, the teacher went over the Student's weekly schedule, administered tests from various classes, and provided the Student with notes. The Director reports that "[a]ll assignments, tests, projects are as assigned by the regular teachers. They remain responsible for the evaluation. [The teacher] is serving as a resource tutor to the student in all subject areas. If there is a problem or concern with respect to any subject, [the teacher] is working back through the regular subject area teacher for clarification and subject matter support." The teacher provided little, if any, actual instruction in the Student's subject areas.
13. The Warrick County Sheriff's Department provides personnel to the School to serve as a School Resource Officer. The resource officer is a deputy sheriff, employed by the Warrick County Sheriff's Department. Due to the perceived threatening and potential criminal nature of the Student's behavior, School administrators reported the incident and the suspension to the resource officer in his capacity as a local law enforcement officer.
14. As a result of the February 14 suspension, the School submitted personally identifiable information about the Student and the suspension to the local circuit court without obtaining the consent of the eligible student. The circuit court serves as the juvenile court and provides "an alternative, site-based program for students who have been suspended." According to the director, two students have completed the court's program after turning 18 years of age.
15. The information faxed by the assistant principal to the circuit court judge included the following:
  - A document prepared by the assistant principal entitled *Referral – Warrick County Courts – Honorable Judge Donald Hendrickson – Regarding [the Student]*. The document recounts a conversation between the assistant principal and the judge regarding the Student and requests that "[the judge's] office get involved with [the high school] in offering assistance to this young man." The document identifies that the Student has an IEP, as well as the School's concerns about the Student's "threats." The document is signed by the assistant principal.
  - A copy of the *Notice of Student Suspension* form for the February 14 suspension.
  - A copy of an e-mail the Student sent to other students on December 25, 2001.
  - Two handwritten notes from other students regarding the Student.
  - A copy of a letter from a local physician regarding the Student.
  - A copy of a handwritten note to the Student's school counselor.
16. The School was unable to provide written certification from the local circuit court that the court would not disclose the information received by the School to a third party, other than another juvenile justice agency, without the parent or eligible student's consent.

## CONCLUSIONS

1. Findings of Fact #2 and #3 demonstrate that the Student was suspended from School for more than ten consecutive instructional days and that the School acknowledges it failed to follow the appropriate procedures for effecting a change of placement. Therefore, a violation of 511 IAC 7-29-2(b) is found.

2. Findings of Fact #2, #3, and #8 reflect that the School decided to expel the Student and issued a *Written Charge and Request for Expulsion* on February 14, 2002. Ten instructional days from that date elapsed on March 1, 2002. However, the School did not convene a CCC to conduct a manifestation determination until March 7, 2002. Therefore, a violation of 511 IAC 7-29-6(b) is found.
3. 511 IAC 7-29-6(j) requires the decision about whether or not to appoint an expulsion examiner to be made by the superintendent after the superintendent receives a copy of the CCC's report that the behavior subject to expulsion is not a manifestation of the student's disability. Findings of Fact #4, #5, and #6 indicate that the School appointed an expulsion examiner on February 15, 2002, prior to conducting a manifestation determination. Although the School reports it rescinded that appointment upon discovering the Student's special education status, the School provided no documentation to demonstrate it advised either the expulsion examiner or the parents that the appointment had been rescinded. Further, the expulsion examiner sent a *Notice of Right to Hearing* to the parent on February 15, 2002, that extended the Student's suspension beyond the original ten days. Counsel for the parent responded to the Notice on February 22, 2002, requesting a hearing as directed by the Notice. Finding of Fact #8 reflects that the CCC determined that the Student's behavior was a manifestation of the Student's disability. As a result of that determination, no expulsion action could proceed. Therefore, a violation of 511 IAC 7-29-6(j) is found.
4. 511 IAC 7-29-5 requires that, when a Student has been suspended for more than ten cumulative instructional days, the School must convene a CCC within ten business days to either develop a plan for conducting a functional behavioral assessment or review and revise an existing behavioral intervention plan. Findings of Fact #2 and #3 demonstrate that the Student's eleventh cumulative instructional day of suspension occurred on March 4, 2002. Finding of Fact #7 reflects that the School conducted a comprehensive assessment on March 4, 2002, and the CCC convened on March 7, 2002, to consider the results of the assessment. Therefore, no violation of 511 IAC 7-29-5 is found.
5. 511 IAC 7-23-1(p) precludes the School from disclosing personally identifiable information from the Student's education record without consent, except in limited circumstances. Indiana Code §20-10.1-22.4-3 permits a school to "disclose or report on the education records of a child, including personally identifiable information contained in the education record without the consent of the child's parent, guardian, or custodian" in certain circumstances, including when the disclosure is to a state or local juvenile justice agency and the agency "receiving the information certifies, in writing, . . . that it will not disclose [the information] to a third party, other than another juvenile justice agency, without the consent of the child's parent, guardian, or custodian." 511 IAC 7-29-9 permits the school to report a crime committed by a student. Findings #14, #15, and #16 demonstrate that the School provided personally identifiable information about the Student to the local circuit court, but that the court had not provided the School with a written assurance that it would not disclose the information to a third party. The School failed to comply with the requirements of IC §20-10.1-22.4-3(b)(3) before releasing personally identifiable information to the local juvenile justice agency without consent. Therefore, a violation of 511 IAC 7-23-1 is found with respect to the release of the information to the local circuit court. Finding of Fact #13 reflects the School reported the Student's actions to local law enforcement personnel as potential criminal activity in accordance with 511 IAC 7-29-9. Therefore, no violation of 511 IAC 7-23-1 is found with respect to the disclosure of information to local law enforcement authorities.

6. Findings of Fact #9, #10, #11, and #12 reflect that the Student's current IEP requires homebound "services" five hours per week, beginning March 15, 2002. Services did not begin until March 22, 2002, and the teacher met with the Student for less than two hours the first week. The homebound teacher serves primarily as a liaison between the Student and the other teachers and provides "resource" tutoring as needed. The Student received little, if any, actual instruction in the six subject areas. Providing homework assignments, administering tests, and providing "resource" tutoring does not constitute instruction. Further, the homebound teacher was not responsible for evaluating the Student's progress in the subject areas. Therefore, violations of 511 IAC 7-27-7(a) are found with regard to:
- i. the School's failure to initiate services on the date identified on the IEP;
  - ii. the School's failure to provide five hours of service during the first two weeks services were to be provided; and
  - iii. the School's failure to provide the Student with actual instruction in the subject areas identified in the Student's IEP.

**The Department of Education, Division of Exceptional Learners requires the following corrective action based on the Findings of Fact and Conclusions listed above.**

### **CORRECTIVE ACTION**

The Warrick County School Corporation and the Gibson-Pike-Warrick Special Education Cooperative shall:

1. Submit an assurance statement, signed by the high school building administrator and the director of special education that the school shall comply with the requirements of:
  - a. 511 IAC 7-29-2 and 511 IAC 7-27-5 when unilaterally removing a student with a disability from the student's current educational placement for more than ten instructional days;
  - b. 511 IAC 7-29-6(b) to convene a CCC to conduct a manifestation determination within 10 instructional days from the date the decision is made to pursue expulsion of a student with a disability;
  - c. 511 IAC 7-29-6(j) to ensure that an expulsion examiner takes no action regarding the expulsion of a student with a disability prior to the conclusion of a manifestation determination in which the CCC determines the student's behavior is not a manifestation of the student's disability, and the superintendent has determined that an action to expel the student should proceed;
  - d. 511 IAC 7-27-7(a) that the school shall implement an agreed-upon IEP as specified in the IEP; and
  - e. IC §20-10.1-22.4-3 when disclosing or reporting personally identifiable information contained in a student's educational record to a local juvenile justice agency.

**The assurance statement shall be submitted to the Division no later than May 22, 2002.**

2. Immediately reconvene the CCC to identify the compensatory services to be provided to the Student as a result of school's failure to provide any services between March 4 and March 15, 2002 (when the revised IEP was agreed upon) and the School's failure to provide homebound instruction in the six subject areas identified in the Student's IEP from March 15 to the present. In the alternative, if the Student has satisfied the criteria necessary to obtain a high school diploma, and chooses this option rather than continue with compensatory services, the CCC Report shall note the Student's decision and his written consent. **A copy of the CCC Report/IEP shall be submitted to the Division no later than May 22, 2002.**

DATE CORRECTED REPORT ISSUED: May 14, 2002

